

MAR 1 2010

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6212
DATE RECEIVED: August 31, 2009
DATE ACTIVATED: December 1, 2009
EXPIRATION OF SOL: October 2013

COMPLAINANTS:

Keith Recine

RESPONDENTS:

Lewis M. Oliver, III, Chairman of Orange
County Republican Executive Committee

Orange County Republican Executive
Committee and Ronald Bass, in his official
capacity as Treasurer

Hillsborough County Republican Executive
Committee and Paul M. Phillips, in his
official capacity as Treasurer

RELEVANT STATUTES:

2 U.S.C. § 431
2 U.S.C. § 432(b)
2 U.S.C. § 434
2 U.S.C. § 441a
2 U.S.C. § 441b
2 U.S.C. § 441i(b)
11 C.F.R. § 100.24
11 C.F.R. § 110.3

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This Complaint alleges that Lewis M. Oliver, III, Chairman of the Orange County
Republican Executive Committee ("OCREC" or the "Committee"), violated 2 U.S.C.

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1 § 441b, a provision of the Federal Election Campaign Act of 1971, as amended (the
2 "Act"), by impermissibly mixing federal contributions with state donations in connection
3 with two transfers of \$10,000 between OCREC and Hillsborough County Republican
4 Executive Committee ("Hillsborough"). The Complaint also claims that Oliver either
5 failed to file, or filed false, disclosure reports regarding these and other transactions in
6 violation of 2 U.S.C. § 434(b). Finally, the Complaint claims that Oliver made an
7 unauthorized expenditure and possibly misappropriated Committee funds for his personal
8 use, which appears to allege a violation of 2 U.S.C. § 439a, and possibly 2 U.S.C.
9 § 432(b)(3), when OCREC issued a \$3,000 check in his name.

10 Respondents Oliver, OCREC, and Hillsborough all deny the allegations in the
11 Complaint and point out that three Florida state agencies have already reviewed and
12 dismissed identical complaints.¹

13 As discussed below, we conclude that the transfers of funds made between the
14 federal accounts of two affiliated state party committees, and a corresponding transfer in
15 the same amount between the non-federal accounts of the same two committees, were
16 permissible pursuant to 11 C.F.R. § 110.3(c)(1) and also were properly disclosed on their
17 federal and state disclosure reports. Further, it appears that the \$3,000 check issued to
18 Oliver was a bona fide reimbursement for his purchase of yard signs on behalf of

¹ The Complaint mirrors identical complaints filed with and dismissed by the Florida State Attorney's Office, Florida Department of Law Enforcement, Office of Executive Investigations, and the Florida Elections Commission. See OCREC Response Exh. A. The State Attorney's Office and FDLE dismissed the complaints for lack of sufficient evidence to indicate that a criminal violation had occurred. OCREC Response, Exh. B. The Florida Elections Commission dismissed the complaint and appeal as insufficient to authorize an investigation under Chapters 104, 106 and Section 105.071 of Florida statutes. OCREC Response, Exh. B.

OCREC. Therefore, we recommend the Commission find no reason to believe that Respondents violated the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

OCREC and Hillsborough are both county party organizations that are affiliated with the State Executive Committee of the Republican Party in Florida. OCREC is registered with the Commission as a Non-Qualified Party Committee, Hillsborough is registered as a Qualified Non-Party Committee. Lewis M. Oliver, III is chairman of the Orange County Republican Executive Committee.²

The allegations in the Complaint are based on two \$10,000 transfers that occurred on October 30, 2008, and a \$3,000 check. First, on October 30, 2008, OCREC made a \$10,000 transfer from its non-federal account to Hillsborough's non-federal account. On the same day, Hillsborough made a transfer of \$10,000 from its federal account to OCREC's federal account. Both Committees reported the federal-to-federal transfer on disclosure reports timely filed with the Commission. Further, both Committees reported the non-federal to non-federal transfers on their Florida disclosure reports. See OCREC and Hillsborough responses. Second, on October 20, 2008, OCREC treasurer Ron Bass and Vice-Chairman Gary Pfister signed a check payable to Mr. Oliver for \$3,000, which has the notation "Expense Reimbursement" in the memo line.

² According to the OCREC website, the duties of a County Executive Committee include: increasing Republican registration, seeking "qualified Republicans to become candidates for local, county, state and federal offices, making party nominations, conducting campaigns for Republican state or local candidates selected in the primary election, and raising and spending party funds for the maintenance of the county party organization."

1 The Complaint alleges that the \$10,000 transfers between OCREC and
2 Hillsborough took place from non-federal to federal accounts as a way to deposit
3 prohibited corporate funds into OCREC's federal account. Complaint at 1. It also
4 alleges that the \$3,000 check to Oliver was for funds that were misappropriated by Oliver
5 without proper authority. *Id.* Finally, the Complaint alleges that the OCREC federal
6 account was a "secret" account that was not properly disclosed to the membership. *Id.* at
7 1-2.

8 OCREC and Oliver contend that all transactions were discussed and approved by
9 the membership. OCREC Response at 4-6. Respondents further assert that OCREC
10 Treasurer, Ronald Bass, signed off on all transfers and properly disclosed them pursuant
11 to state and federal reporting requirements, and that the \$3,000 was a reimbursement for
12 yard signs that were purchased by Oliver on behalf of OCREC. *Id.* at 6-7. Respondents
13 provide a copy of the OCREC's State Disclosure report (Itemized Contribution Page) that
14 reflects the \$10,000 transfer from OCREC's non-federal account to Hillsborough's non-
15 federal account on October 30, 2008, as well as a copy of the check for the funds.
16 OCREC Response, Exhs. D and E. Respondents also provide a copy of the disclosure
17 report filed with the Commission, which reflects the \$10,000 transfer from
18 Hillsborough's federal account into OCREC's federal account on October 30, 2008, as
19 well as a copy of that check. OCREC Response, Exhs. F, G and H.

20 A review of OCREC's Post-General Report filed with the Commission indicates
21 that it had \$7,361 in its federal account at the start of the reporting period (on October 15,
22 2008), it received \$14,167 (including the \$10,000 transfer) from Hillsborough and the
23 Republican Party of Florida, and made approximately \$13,361 in expenditures during the

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1 reporting period (including a \$3,000 reimbursement to Respondent Oliver for yard signs).
2 With the exception of the \$3,000 reimbursement to Oliver, the expenditures are disclosed
3 on Schedule H4 (Disbursement for Allocated Federal/Non-federal Activity) as 100%
4 allocable to "federal administrative activity" with the purpose described as expenses for
5 "rent, phones, utilities." There were no expenditures for "federal election activity"
6 disclosed for that reporting period.

7 As to the \$3,000 payment to Oliver, Respondents provide copies of emails,
8 meeting minutes, invoices, and expense reports documenting the purchase and cost of the
9 yard signs, as well as the credit card receipt from the vendor, which reflects that Oliver
10 purchased the yard signs with his personal credit card. OCREC Response, Exhs. J, K, L
11 and N. Respondents also provide a copy of the \$3,000 cancelled check, signed by
12 OCREC Treasurer Ron Bass and Vice-Chairman Gary Pfister, with the words "Expense
13 Reimbursement" in the memo line. OCREC Response, Exh. M. The \$3,000
14 reimbursement to Oliver was disclosed on OCREC's 2008 Post-General Report in
15 Schedule B (Itemized Disbursements) with the purpose description listed as
16 "reimbursement for yard signs."

17 **B. Analysis**

18 **1. Account Transfers**

19 Based on the available information, we conclude that the transfer of funds made
20 between the affiliated committees, OCREC and Hillsborough, were permissible pursuant
21 to 11 C.F.R. § 110.3(c)(1), and, therefore did not result in prohibited contributions as
22 alleged in the Complaint.

1 The Act provides that state, district, and local political committees that receive or
2 make contributions in excess of \$1,000 during a calendar year are considered to be
3 “political committees,” subject to the FECA's contribution limitations, prohibitions and
4 reporting requirements. *See* 2 U.S.C. § 434(4)(c). State, district, and local committees
5 that are established, maintained or controlled by the same state or regional association are
6 considered to be “affiliated” under the Act, 11 C.F.R § 110.3(a)(1)(ii), and are permitted
7 to transfer funds between their respective separate segregated accounts. 11 C.F.R.
8 § 110.3(c)(1). While state, local, and county party committees may raise funds on behalf
9 of state and federal candidates, they are prohibited from using corporate funds to pay for
10 any expenditure in connection with a federal election. 2 U.S.C. § 441b.

11 The Act and Commission regulations allow two affiliated county committees,
12 such as OCREC and Hillsborough, to transfer funds between their respective federal
13 accounts and between their respective non-federal accounts. *See* 2 U.S.C. § 441a(a)(4);
14 11 C.F.R. § 110.3(c)(1). Thus, OCREC's \$10,000 transfer from its non-federal account
15 into Hillsborough's non-federal account, as well as Hillsborough's transfer of \$10,000
16 from its federal account to OCREC's federal account, were legally permissible and there
17 is no reason to believe that either committee violated 2 U.S.C. § 441b.

18 **2. Disclosure Allegations**

19 Contrary to the assertion in the Complaint, OCREC properly disclosed the details
20 of the transfers on its federal and state disclosure reports.

21 Section 434(b) of the Act requires a political committee to file disclosure reports
22 for the reporting period and calendar year, which include “the total amount of all
23 receipts” and “transfers from affiliated committees.” 2 U.S.C. § 434 (b)(2)(D) & (F).

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OCREC disclosed the \$10,000 transfer received from Hillsborough in its 2008 Post-General Report. OCREC Response, Exh. D. The \$10,000 transfer to OCREC is also disclosed by Hillsborough in its 2008 Post-General Report. OCREC Response, Exh. F. Thus, there is no reason to believe that Mr. Oliver, OCREC or Hillsborough violated 2 U.S.C. § 434(b).

3. Alleged Misappropriated Funds

Although Complainant does not cite a specific provision of the Act in connection with Oliver's alleged misappropriation of funds from a federal account of a political committee, 2 U.S.C. § 439a prohibits the conversion to personal use of any contribution made to a candidate or authorized committee. If true, the misappropriation of funds could also have resulted in a violation of 2 U.S.C. § 432(b)(3), if OCREC funds were commingled with Oliver's personal funds.

There are two reasons Mr. Oliver did not violate these provisions. First, OCREC was not the authorized committee of a federal candidate, and 2 U.S.C. § 439a does not apply to funds in its federal account. Second, there does not appear to have been any misappropriation or commingling, as the available information indicates that Respondent Oliver was properly reimbursed for his purchase of yard signs to benefit OCREC. Respondents provide the invoices, email records, and meeting minutes that reference the purchase of the yard signs, along with a copy of Oliver's credit card statement and the \$3,000 cancelled check, signed by the OCREC Treasurer and Vice-Chairman for "expenditure reimbursement." OCREC Response, Exhs. J-M. As there was no misappropriation of funds, Mr. Oliver could not have violated the prohibition against

1 commingling federal contributions with other funds. 2 U.S.C. § 432(b)(3). Accordingly,
2 there is no reason to believe that Mr. Oliver violated 2 U.S.C. §§ 439a and 432(b)(3).

3 **4. Conclusion**

4 Based on the available information, we recommend that the Commission find no
5 reason to believe that Lewis M. Oliver, III, and Orange County Republican Executive
6 Committee and Ronald Bass, in his official capacity as Treasurer, violated 2 U.S.C.
7 §§ 441b and 434(b). We also recommend that the Commission find no reason to believe
8 that Lewis M. Oliver, III violated 2 U.S.C. §§ 439a and 432(b)(3). Finally, we
9 recommend that the Commission find no reason to believe that Hillsborough County
10 Republican Executive Committee and Paul M. Phillips, in his official capacity as
11 Treasurer, violated 2 U.S.C. §§ 441b and 434(b).

12 **III. RECOMMENDATIONS**


- 13 1. Find no reason to believe that Lewis M. Oliver, III and Orange County
14 Republican Executive Committee and Ronald Bass, in his official capacity as
15 Treasurer, violated 2 U.S.C. §§ 441b and 434(b);
- 16 2. Find no reason to believe that Lewis M. Oliver, III violated 2 U.S.C. §§ 439a
17 and 432(b)(3);
- 18 3. Find no reason to believe that Hillsborough County Republican Executive
19 Committee and Paul M. Phillips, in his official capacity as Treasurer, violated
20 2 U.S.C. §§ 441b and 434(b);
- 21 4. Approve the Factual and Legal Analyses;
- 22 5. Approved the appropriate letters; and
- 23 6. Close the file.

MUR 6212
First General Counsel's Report

Thomasenia P. Duncan
General Counsel

3/1/10
Date

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Associate General Counsel for Enforcement


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